

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

PATRICK SUDELL,)
Register No. 1019076,)
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)
Plaintiff,)
)
)
v.) No. 04-4116-CV-C-NKL
)
)
SAMANTHA DRY, et al.,)
)
)
Defendants.)

REPORT AND RECOMMENDATION

Plaintiff, while confined in a Missouri penal institution, commenced this action under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and the jurisdictional statute, 28 U.S.C. § 1343. This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

A review of the record indicates defendants Correctional Medical Services (CMS), Dental Assistant Ben, Dr. Mohaddam and John Napier have not been served with process. Fed. R. Civ. P. 4(m) provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Plaintiff was granted leave to proceed in forma pauperis on September 21, 2004. Here, it has been more than 120 days since plaintiff's complaint was filed naming CMS, Dental Assistant Ben, Dr. Mohaddam and John Napier as defendants. Plaintiff was directed to return completed summons and service forms showing the addresses where these defendants may be served, but has failed to do so.

On August 2, 2005, plaintiff was directed to show cause why his claims against these defendants should not be dismissed, pursuant to Rule 4(m). Plaintiff has failed to respond to that order. Accordingly, plaintiff's claims against these defendants should be dismissed.

IT IS, THEREFORE, RECOMMENDED that plaintiff's claims against defendants Correctional Medical Services, Dental Assistant Ben, Dr. Eliya Mohaddam and John Napier be dismissed, pursuant to Fed. R. Civ. P. 4(m).

Under 28 U.S.C. § 636(b)(l), the parties may make specific written exceptions to this recommendation within twenty days. If additional time is needed, a motion for an extension of time must be filed within twenty days. The motion should state the reasons for the request. *See Nash v. Black*, 781 F.2d 665, 667 (8th Cir. 1986) (citing *Thomas v. Arn*, 474 U.S. 140 (1985)); *Messimer v. Lockhart*, 702 F.2d 729 (8th Cir. 1983). Failure to make specific written exceptions to this report and recommendation may result in a waiver of the right to appeal.

Dated this 1st day of September, 2005, at Jefferson City, Missouri.

/s/ _____

WILLIAM A. KNOX
United States Magistrate Judge